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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/087,457 | 03/01/2002 | Marc Ian Bingley | 0126-024P/PLS | 6665 |
| 22831 | 7590 | 11/28/2003 | | |
| SCHWEITZER CORNMAN GROSS & BONDELL LLP 292 MADISON AVENUE - 19th FLOOR NEW YORK, NY 10017 | | | EXAMINER | PRINCE, FRED G |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1724 | |

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| <i>Office Action Summary</i> | Application No. | Applicant(s) |
|------------------------------|-----------------|------------------|
| | 10/087,457 | INGLEY, MARC IAN |
| Examiner | Art Unit | |
| Fred Prince | 1724 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

Office Action Summary

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 29 August 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-22 is/are rejected.
7) Claim(s) 3,4 and 6-10 is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). ____ .
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . 6) Other: ____ .

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claims 3, 4, and 6-10 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form. The limitations recited in the above claims do add structure to the claim from which the above claims immediately depend. The limitations recited are process variables which are not given patentable weight in apparatus claims.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Reid. Reid, directed toward a reactor and method of controlling an aerator, teaches a mixed reactor (40) with an aerator (42) intermittently controlled to raise a dissolved oxygen level for a predetermined time period for aerobic treatment, wherein a set point is

maintained which is higher than a first target level (Fig. 2), first target level is reached and vary an oxygen level (col. 5, lines 65-68; col. 6, lines 1-2) and includes an inoperable phase including a predetermined anoxic time period (col. 2, lines 12-21) with a lower dissolved oxygen level.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reid.

Reid is described above. Reid does not disclose overriding the operative and inoperative phases with the specified multiples.

It is submitted that it is well within the purview of the skilled artisan to override the operative and inoperative phases with the specified multiples in order to ensure that the dissolved oxygen levels do not become excessively high or low.

Accordingly, it would have been obvious for the skilled artisan to have modified the method of Reid such that it includes overriding the operative and inoperative phases with the specified multiples in order to ensure that the dissolved oxygen levels do not become excessively high or low.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References are cited of interest to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (703) 306-9169. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine R. Copenheaver can be reached on (703) 308-1261. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Fred G. Prince
FRED G. PRINCE
PRIMARY EXAMINER
11/19/03